

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 06-10175-01-WEB
)
 OSCAR MUNOZ-MARTINEZ,)
)
 Defendant.)
 _____)

Memorandum and Order

The defendant Oscar Munoz-Martinez came before the court for sentencing on January 8, 2007. This written memorandum will supplement the oral rulings made by the court at the sentencing hearing.

The defendant filed no written objections to the Presentence Report, but at the sentencing hearing he raised a challenge to factual assertions in paragraphs 37 and 40 of the Report. Defendant disputes the assertion in ¶ 37 that some of his tattoos indicate he is a member of the Mara Salvatrucha or “MS-13” gang. He also disputes the assertion in ¶ 40 that he has a tattoo on his left calf which says “MS 13.” Defendant contends the tattoo contains the letters “ES” (for El Sur) rather than MS.¹

The court finds it need not rule on this issue because the disputed matter will not be taken into account and will not affect sentencing. Fed.R.Crim.P. 32(h)(3)(B). The court further finds that the Bureau of Prisons has the expertise to address this issue and is the appropriate agency to determine the content and significance of defendant’s tattoos insofar as they may affect his

¹ The PSR states that the defendant has numerous other tattoos, including ones that say “Sur 11” and “Sur 13.” PSR ¶ 40.

classification or designation by the BOP.

The Probation Officer in charge of this case shall see that a copy of this order is appended to any copy of the Presentence Report made available to the Bureau of Prisons. IT IS SO ORDERED this 9th Day of January, 2007, at Wichita, Ks.

s/Wesley E. Brown

Wesley E. Brown

U.S. Senior District Judge